

PROPERTY TAX APPEAL BOARD'S DECISION

APPELLANT: Phillip W. and Mary A. Versten
DOCKET NO.: 04-01266.001-R-1
PARCEL NO.: 08-33-405-002

The parties of record before the Property Tax Appeal Board are Phillip W. and Mary A. Versten, the appellants, by Eugene B. Levin, CPA, JD, of Horwich Coleman Levin, LLC, Certified Public Accountants of Chicago, and the McHenry County Board of Review.

The subject property has been improved with a two-story frame dwelling of 2,390 square feet of living area. The dwelling was newly constructed in 2004. The property features a full unfinished basement of 931 square feet of building area, central air conditioning, a fireplace, and two-car attached garage. The property is located in Woodstock, Greenwood Township, McHenry County.

The appellants submitted evidence before the Property Tax Appeal Board claiming overvaluation in the assessment process as to the improvement assessment only. In support of this claim, the appellants submitted evidence of a recent sale of the subject with a settlement statement; in addition, appellants provided further support with two separate appraisals of the subject property.

Counsel for the appellants argued that there was a recent sale of the subject property just 21 days prior to the assessment date at issue of January 1, 2004 and based on that arm's length transaction, the fair market value of the subject property was not accurately reflected in its assessed valuation. The settlement statement filed in this matter reflects a contract sales price of \$235,205 for the subject property as of a settlement date of December 10, 2003; appellant Mary Versten testified the purchase was made directly from the builder, an unrelated party, with a "take it or leave it" price and the only "discount" provided was \$3,000 for upgrades. She further

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Based on the facts and exhibits presented, the Property Tax Appeal Board hereby finds a reduction in the assessment of the property as established by the McHenry County Board of Review is warranted. The correct assessed valuation of the property is:

LAND:	\$	15,219
IMPR.:	\$	63,104
TOTAL:	\$	78,323

Subject only to the State multiplier as applicable.

testified that a contract for purchase was executed in May 2003. On cross-examination, she acknowledged that when contracting for their dwelling, appellants were the third purchasers within this newly developing subdivision of 60 to 80 lots.

Utilizing two of the three traditional approaches to value, the appraisal, which provided an estimated market value of \$235,500 for the subject property as of November 14, 2003, was prepared for lending purposes and was done in conformance with reporting requirements set forth under the Uniform Standards of Professional Appraisal Practice. The appraiser, however, was not present at the hearing to provide testimony or to be cross-examined regarding the methodology or final value conclusion.

Using the cost approach to value the appraiser estimated the subject's site value as \$45,000 with the improvements having an estimated cost new of \$193,502. No depreciation was estimated, but \$3,000 was attributed to "as is" value of site improvements. Thus, the appraiser estimated a value under the cost approach of \$241,500.

Under the sales comparison approach, the appraisal depicts three comparable properties located within 2.3 miles of the subject property. The comparables consisted of two-story frame or frame and brick dwellings which were 5 to 11 years old. The comparables had full basements, two of which were finished. The comparables ranged in size from 2,200± to 2,500± square feet of living area and featured two-car garages, central air conditioning, and one or two fireplaces each. The comparables sold between May 2003 and August 2003 for prices ranging from \$235,600 to \$247,500 or from \$94.24± to \$108.59± per square foot of living area including land. In comparing the comparable properties to the subject, the appraiser made adjustments for exterior construction, age, size, basement finish, functional utility, and any additional features. This analysis resulted in adjusted sales prices for the comparables ranging from \$233,350 to \$241,000 or from \$93.34± to \$109.39± per square foot of living area including land. Based on these adjusted sales, the appraiser estimated the fair market value of the subject of \$235,500 or \$98.54 per square foot of living area including land.

The second appraisal which provided an estimated market value of \$245,000 for the subject property as of April 22, 2004 indicates it was prepared for lending purposes and was done in conformance with reporting requirements set forth under the Uniform Standards of Professional Appraisal Practice. None of the three traditional approaches to value were itemized in the appraisal report to provide any guidance as to the basis of the value opinion and the appraiser was not present at the hearing to provide testimony or to be cross-examined regarding the

methodology utilized or how the final value conclusion was derived.

Based on the foregoing evidence and primarily based upon the recent purchase price of the subject property, the appellant requested a reduction in the improvement assessment to \$63,181 for a total assessment of \$78,400. This suggested final assessment of the subject property as requested by the appellant would reflect an estimated market value of \$235,435 or \$98.51 per square foot of living area including land using the 2004 three-year median level of assessments for McHenry County of 33.30% as developed by the Illinois Department of Revenue.

The board of review submitted its "Board of Review Notes on Appeal" wherein the final assessment of \$86,658 was disclosed. The final assessment of the subject property reflects a market value of \$260,234 or \$108.88 per square foot of living area including land using the 2004 three-year median level of assessments for McHenry County of 33.30%. The Greenwood Township Assessor Karen D. Roth testified on behalf of the board of review and a letter from the assessor with attachments of three comparable "pre-construction sales" with property record cards along with applicable transfer declarations and three comparables which were not "pre-construction sales" with property record cards and transfer declarations were submitted as evidence. No further substantive evidence of valuation such as a grid analysis including the descriptive details concerning these suggested comparable properties was submitted by the board of review.

In testimony, assessor Roth explained that in the cost approach mass appraisal system utilized by the office, certain of the properties like the subject, did not appear to reflect the actual sales prices of the properties. Further investigation by the assessor's office with the builder provided an explanation. Namely, Roth testified that in a conversation with "Joe" of the building company, the subject and other properties which were sold in 2003 were given a pre-construction discount. The assessor contended that in her mass appraisal system formulation, the subject and similar 2003 pre-construction sale properties would have needed a condition D or D- grading in order to arrive at the actual sale price of the properties rather than the actual "average" condition of this new construction. Therefore, in order to maintain uniformity of assessments in the area, the subject property's assessment could not be reduced to reflect the actual sale price. The assessor also testified that in a conversation with appellant Mary Versten in October 2004, the appellant acknowledged that her property could probably sell for \$260,000. On cross-examination, the assessor also acknowledged that properties in the subject's area sold for less than \$260,000.

First, examining the property record cards submitted by the board of review for the "pre-construction sale" properties reveals three newly constructed either one-story or two-story frame or frame and masonry dwellings. Two of the comparables included full basements; all of the comparables appeared to have central air conditioning, a fireplace, and a garage ranging from 415 to 701 square feet of building area. The dwellings appeared to range in size from 2,124 to 2,466 square feet of living area. The records reflect these properties sold in either February or March 2004 for prices ranging from \$245,320 to \$260,425 or from \$105.61 to \$118.55 per square foot of living area including land. The subject's sale price of \$235,205 reflects a price of \$98.41 per square foot of living area including land.

Second, examining the property records submitted by the board of review for the 'non-pre-construction' sale properties reveals three suggested properties, however, one property at 331 Martin was already provided by the board of review in the first set of properties. Thus, the two remaining properties left for consideration reveal newly constructed two-story frame dwellings with central air conditioning, a fireplace, and a garage of either 420 or 629 square feet of building area. The properties appear to have either 2,712 or 2,824 square feet of living area and sold in February and July 2004 for sale prices of \$269,231 and \$276,745 or \$99.27 and \$98.00 per square foot of living area including land.

In conclusion, the board of review asserted that due to a "pre-construction discount," the subject's sale price does not accurately reflect its fair market value. As such, the board of review requested confirmation of the subject's assessed value.

After reviewing the record and considering the evidence submitted by the parties, the Property Tax Appeal Board finds that it has jurisdiction over the parties and the subject matter of this appeal.

When overvaluation is claimed, the appellants have the burden of proving the value of the property by a preponderance of the evidence. Winnebago County Board of Review v. Property Tax Appeal Board, 313 Ill. App. 3d 179, 728 N.E.2d 1256 (2nd Dist. 2000); National City Bank of Michigan/Illinois v. Illinois Property Tax Appeal Board, 331 Ill. App. 3d 1038 (3rd Dist. 2002); *Official Rules of the Property Tax Appeal Board*, 86 Ill. Admin. Code Sec. 1910.63(e). Proof of market value may consist of an appraisal, a recent arm's length sale of the subject property, recent sales of comparable properties, or recent construction costs of the subject property. *Official Rules of the Property Tax Appeal Board*, 86 Ill. Admin. Code Sec. 1910.65(c).

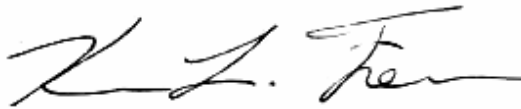
In this proceeding, the Property Tax Appeal Board finds that the evidence of the recent sale price of the subject property in December 2003 submitted by the appellants depicting the purchase of the property for \$235,205 is the best evidence of the subject's market value as of January 1, 2004 in the record. Moreover, the board of review's hearsay testimony with regard to a purported "pre-construction discount" has been given no weight in this proceeding. Even with the assessor's effort at introducing hearsay testimony in this proceeding, the board of review failed to adequately rebut the apparent arm's length nature of the instant transaction. The Illinois Supreme Court has defined fair cash value as what the property would bring at a voluntary sale where the owner is ready, willing, and able to sell but not compelled to do so, and the buyer is ready, willing and able to buy but not forced to do so. Springfield Marine Bank v. Property Tax Appeal Board, 44 Ill. 2d 428 (1970). A contemporaneous sale of property between parties dealing at arm's-length is a relevant factor in determining the correctness of an assessment and may be practically conclusive on the issue of whether an assessment is reflective of market value. Rosewell v. 2626 Lakeview Limited Partnership, 120 Ill. App. 3d 369 (1st Dist. 1983), People ex rel. Munson v. Morningside Heights, Inc., 45 Ill. 2d 338 (1970), People ex rel. Korzen v. Belt Railway Co. of Chicago, 37 Ill. 2d 158 (1967); and People ex rel. Rhodes v. Turk, 391 Ill. 424 (1945). The purported existence of some unspecified and undocumented "pre-construction discount" of an unknown amount presented by the board of review has not adequately rebutted the apparent arm's length nature of the instant transaction between the appellants and the builder.

Based upon the market value as stated above, the Property Tax Appeal Board finds that a reduction is warranted. Since market value has been established, the median level of assessment for McHenry County for 2004 of 33.30% shall be applied.

This is a final administrative decision of the Property Tax Appeal Board are subject to review in the Circuit Court or Appellate Court under the provisions of the Administrative Review Law (735 ILCS 5/3-101 et seq.) and section 16-195 of the Property Tax Code.



Chairman



Member



Member



Member



Member

DISSENTING: _____

C E R T I F I C A T I O N

As Clerk of the Illinois Property Tax Appeal Board and the keeper of the Records thereof, I do hereby certify that the foregoing is a true, full and complete Final Administrative Decision of the Illinois Property Tax Appeal Board issued this date in the above entitled appeal, now of record in this said office.

Date: September 28, 2007



Clerk of the Property Tax Appeal Board

IMPORTANT NOTICE

Section 16-185 of the Property Tax Code provides in part:

"If the Property Tax Appeal Board renders a decision lowering the assessment of a particular parcel after the deadline for filing

complaints with the Board of Review or after adjournment of the session of the Board of Review at which assessments for the subsequent year are being considered, the taxpayer may, within 30 days after the date of written notice of the Property Tax Appeal Board's decision, appeal the assessment for the subsequent year directly to the Property Tax Appeal Board."

In order to comply with the above provision, YOU MUST FILE A PETITION AND EVIDENCE WITH THE PROPERTY TAX APPEAL BOARD WITHIN 30 DAYS OF THE DATE OF THE ENCLOSED DECISION IN ORDER TO APPEAL THE ASSESSMENT OF THE PROPERTY FOR THE SUBSEQUENT YEAR.

Based upon the issuance of a lowered assessment by the Property Tax Appeal Board, the refund of paid property taxes is the responsibility of your County Treasurer. Please contact that office with any questions you may have regarding the refund of paid property taxes.